

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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DAVID CHMIEL,	:	Judge Kane
	:	
Petitioner,	:	No. 1:06-CV-02098
v.	:	
	:	THIS IS A CAPITAL CASE
JOHN E. WETZEL, Commissioner, et al.,	:	
	:	
Respondents.	:	
	:	
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PETITIONER’S SECOND MOTION TO COMPEL DISCOVERY

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Counsel for Petitioner

Dated: May 5, 2017
Philadelphia, Pennsylvania

Petitioner, David Chmiel, through undersigned counsel, hereby moves this Court to compel Respondents to comply with the Court's orders dated September 24, 2014 ("Discovery Order") (ECF No. 69) and March 7, 2016 (ECF No. 99). In support thereof, Petitioner states the following:

1. On September 24, 2014, this Court granted Petitioner's motion for discovery, found good cause for Petitioner's request, and ordered Respondents to answer Petitioner's interrogatories and produce all requested documents including the Lackawanna County District Attorney's file, by October 24, 2014. Order, Sept. 24, 2014, ECF No. 69. This Court found production of those documents "fundamental" to proving violations of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), as pleaded in Claim II.A of Mr. Chmiel's Petition for Writ of Habeas Corpus ("Petition"). Following a dispute about the Respondents' duty to produce the Office of the Attorney General's file (OAG file) under the order, Petitioner moved to compel production of those documents pursuant to Federal Rule of Civil Procedure 37. Mot. to Compel, ECF No. 88.

2. This Court compelled Respondents to produce the entire file for Petitioner's inspection and review and ordered Respondents to produce a privilege log pursuant to Federal Rule of Civil Procedure 26(b)(5) as to any documents included in the OAG file over which Respondents asserted a privilege. Order at 8, Mar. 7, 2016, ECF No. 99.

3. Respondents have asserted privilege over numerous documents that Petitioner has reason to believe are essential to proving his *Brady* and *Napue* claims. In light of the constitutional mandate for disclosure, Petitioner now requests that this Court find that Petitioner has shown a substantial need for relevant documents on which Respondents assert privilege. In

the alternative, Petitioner requests that this Court make an *in camera* inspection of the documents over which privilege is asserted to determine whether they should be produced to Petitioner.

4. A brief in support of this motion and proposed order accompany this request.

Respectfully Submitted,

/s/ Tracy Ulstad
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CERTIFICATE OF SERVICE

I, Tracy Ulstad, hereby certify that on this 5th day of May, 2017, a copy of the foregoing documents was served by electronic filings upon the following:

Phillip McCarthy, Esq.
Deputy Attorney General
Pennsylvania Office for the Attorney General
16th Floor, Strawberry Square
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/s/ Tracy Ulstad _____
Tracy Ulstad